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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/979,579	11/16/2001	Alan F. Savicki	492.196	3934

27023 7590 05/19/2004
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EXAMINER

KENNY, STEPHEN

ART UNIT	PAPER NUMBER
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3726

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/979,579		SAVICKI ET AL.	
	Examiner		Art Unit	
	Stephen J Kenny		3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-117 is/are pending in the application.
- 4a) Of the above claim(s) 1-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 58-117 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/16/01</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restrictions***

Applicant's election with traverse of claims 58-117 is acknowledged. The traversal is on the ground(s) that a separate search is not required. This is not found persuasive because merely alleging that a separate search is not required is not sufficient. The examiner has demonstrated *a priori* that a separate search is required by the different classifications of Groups I & II in the previous office action.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 60-67, 69, 81-88, 90, 99-106, 108 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 60, 81, & 99 recite the claim for a second flexible occlusion member, however there is no disclosure of a second flexible occlusion member. Item 210 is the only flexible occlusion member disclosed.

Claims 64, 85, & 103 recites the limitation that the flexible occlusion member (210) have a second position wherein said member is not engaged with the fastening strip, however according to the disclosure (Figures 14-16 & page 18, lines 15+) the flexible occlusion member (210, with portions 214, 216) are always in contact/engaged with the strips (130, 131).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 58, 59, 68, 79, 80, 89, 97, 98, & 107 are rejected under 35 U.S.C. 102(b) as being anticipated by Richardson et al. (US Patent No 5301394).

Regarding claims 58, 79, 97, Richardson discloses a closure device including a slider and container having two sidewalls (12, 13) including two mating fastening strips (18, 19) arranged to be interlocked over a predetermined length, comprising: two fastening strips (18, 19); a slider slidably disposed on said fastening strips for facilitating the occlusion/deocclusion of said strips when moved along the strips; said fastening strips & slider having an X, Y, & Z axis which are orthogonal (i.e. mutually perpendicular); said slider comprising a housing (20) having a first flexible occlusion member (21b, 22b) for facilitating the occlusion of said fastening strips when said slider is moved towards an end of the fastening strips (Figure 1-4 & column 3, lines 27+).

Regarding claims 59, 68, 80, 89, 98, 107, Richardson discloses the first flexible occlusion member comprises a first inwardly biased leg (21b) for engaging said first strip (19); wherein said biased leg flexes for facilitating the attachment of said slider (10) onto said fastening strips (18, 19) (column 4, lines 29-50).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 70-78, 91-96, 109-117 rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson.

Regarding claims 70-75, 91-96, 109-114 Richardson discloses the claimed invention except for explicitly stating that the fastening strips have a first & second width. However the flexible occlusion member & biased leg (21b, 22b) configuration of Richardson is fully capable of adjusting to (or "take set") any given width of fastening strip (18, 19) due to the spring loaded action (column 4, lines 28-50). Furthermore, fastening strips often times are formed of varying widths due to the imperfections/variations of the plastic forming processes. In fact, applicant acknowledges this occurrence on page 20, lines 8-10.

Regarding claims 76-78, & 115-117, Richardson disclosed the claimed invention except for the particular type of fastening strip claimed. It would have been an obvious matter of design choice to employ any particular types of fastening strips claimed, since applicant has not disclosed that such fastening strip types solves any stated problem or is for any particular purpose, and it appears that the fastening strips of Richardson would perform equally well. Furthermore, applicant states on page 11, lines 3-5 that "any type of fastening strip" is capable of performing the invention.

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Conclusion

The prior art made of record on the attached PTO-892, and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J Kenny whose telephone number is 703-306-0359. The examiner can normally be reached on mon - fri 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 703-308-1789. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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